

**REMARKS**

This amendment is filed in response to the Office Action dated January 2, 2004. Claims 1-18 are pending. In the Office Action of January 2, 2004, the Examiner rejected claims 1, 4-8 and 11-16 under 35 U.S.C. § 102(b) as being anticipated by Kannes, U.S. Patent No. 5,382,972. The Examiner rejected claims 2-3<sup>1</sup>, 9-10 and 17-18 under 35 U.S.C. 103(a) as being unpatentable over Kannes in view of Iizawa, U.S. Patent No. 5,801,756. These rejections are essentially maintained from the first Office Action dated July 17, 2003.

By this amendment, all of the independent claims (claims 1, 6, and 13) are amended to more particularly and distinctly claim the invention. The dependent claims (claims 2, 3, 7, 9, 10-15, 17, and 18) are amended where necessary to conform to the independent claims. More specifically, Applicant's attorney and the Examiner had a telephone interview on March 10, 2004. In that interview, the Examiner expressed reservations on patentability regarding the broad recitation to "determining an amount of audio data," analogizing this recitation to the measure of amplitude disclosed in Kannes. Applicant's attorney addressed this argument in the previous response and maintains that position. Nonetheless, to further prosecution, and in keeping with suggestions made in the telephone interview, the independent claims are presently amended to explicitly indicate that the audio data subject to the invention is received in a digital form, *i.e.*, samples or packets. Support for this amendment is found throughout the drawings, claims and specification, and in particular, in the specification at page 2, lines 14 through 17 and page 7, line 1 through page 8, line 2. As amended, the claims are further distinguishable from Kannes by noting that the determination of the amount of audio data

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<sup>1</sup> The office action actually indicates "4-5," rather than "2-3," but consistent with the previous response (September 19, 2003) and office action (July 17, 2003), the rejection is treated as being made with respect to claims 2-3.

relates to digital and not analog data. Hence, the Kannes disclosure re amplitude is clearly not applicable to the present claims. Applicant persists in the arguments made in the response dated September 19, 2003, but does not repeat the text of those arguments here. The amended claims are now in condition for allowance.

**CONCLUSION**

All pending claims are in condition for allowance. Allowance at an early date is solicited.

Respectfully submitted,



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